

**ASSEMBLY BILL**

**No. 192**

**Introduced by Assembly Member Tran**

January 27, 2005

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An act to amend Section 830.6 of, and to add Section 815.1 to, the Government Code, relating to governmental tort liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 192, as introduced, Tran. Tort Claims Act.

(1) The Governmental Tort Claims Act governs the tort liability and immunity of public entities and their officers and employees, claims and actions against public entities and their officers and employees, insurance indemnification, and the defense of public officers and employees. Among other things, the act provides that a public entity is not liable for an injury, except as otherwise provided by statute, whether the injury arises out of an act or omission of the public entity or a public employee or any other person.

This bill would limit the liability of public entities in actions for injury to \$250,000 per individual or \$500,000 per occurrence.

(2) The act provides that neither a public entity nor a public employee is liable for an injury caused by the plan or design for the construction of, or an improvement to, public property where the plan or design has been approved in advance by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give approval, or where the plan or design is prepared in conformity with standards previously approved, if the court makes specified determinations.

This bill would provide that the applicability of that provision is a question of law for the court to determine.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 815.1 is added to the Government Code,  
2     to read:  
3     815.1. Notwithstanding any other law, in no action for injury  
4     shall the liability of a public entity exceed two hundred fifty  
5     thousand dollars (\$250,000) per individual or five hundred  
6     thousand dollars (\$500,000) per occurrence.  
7     SEC. 2. Section 830.6 of the Government Code is amended to  
8     read:  
9     830.6. (a) Neither a public entity nor a public employee is  
10    liable under this chapter for an injury caused by the plan or  
11    design of a construction of, or an improvement to, public  
12    property where ~~such~~ *the* plan or design has been approved in  
13    advance of the construction or improvement by the legislative  
14    body of the public entity or by some other body or employee  
15    exercising discretionary authority to give ~~such~~ approval or where  
16    ~~such~~ *the* plan or design is prepared in conformity with standards  
17    previously ~~so~~ approved, if the trial or appellate court determines  
18    that there is any substantial evidence upon the basis of which (a)  
19    ~~a~~ *either of the following apply:*  
20    (1) A reasonable public employee could have adopted the plan  
21    or design or the standards therefor ~~or (b) a~~.  
22    (2) A reasonable legislative body or other body or employee  
23    could have approved the plan or design or the standards therefor.  
24    ~~Notwithstanding~~  
25    (b) *Notwithstanding* notice that constructed or improved public  
26    property may no longer be in conformity with a plan or design or  
27    a standard ~~which~~ *that* reasonably could be approved by the  
28    legislative body or other body or employee, the immunity  
29    provided by this section shall continue for a reasonable period of  
30    time sufficient to permit the public entity to obtain funds for and  
31    carry out remedial work necessary to allow ~~such~~ *the* public  
32    property to be in conformity with a plan or design approved by  
33    the legislative body of the public entity or other body or  
34    employee, or with a plan or design in conformity with a standard  
35    previously approved by ~~such~~ *the* legislative body or other body

1 or employee. In the event that the public entity is unable to  
2 remedy ~~such~~ the public property because of practical  
3 impossibility or lack of sufficient funds, the immunity provided  
4 by this section shall remain so long as ~~such~~ the public entity ~~shall~~  
5 reasonably ~~attempt~~ *attempts* to provide adequate warnings of the  
6 existence of the condition not conforming to the approved plan or  
7 design or to the approved standard. However, where a person  
8 fails to heed ~~such~~ that warning or occupies public property  
9 despite ~~such~~ that warning, ~~such~~ the failure or occupation shall not  
10 in itself constitute an assumption of the risk of the danger  
11 indicated by the warning.

12 (c) *The applicability of this section is a question of law for the*  
13 *court to determine.*